

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAMELA D. MCNEIL and JAMES K
CANTWILL, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

IKO MANUFACTURING, IKO
INDUSTRIES, LTD., IKO SALES, LTD.,
IKO PACIFIC, INC., and IKO CHICAGO,
INC.,

Defendants.

Case No. 09-cv-04443

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION
TO STAY PROCEEDINGS PENDING DECISION BY THE
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

The parties agree that this Court should temporarily stay proceedings pending a decision on the motion to transfer (“MDL Motion”) of Defendants IKO Manufacturing Inc., IKO Pacific Inc., and IKO Chicago Inc. (collectively, the “Moving Defendants”) because a stay will conserve judicial resources and eliminate the risk of inconsistent pretrial rulings. Similar actions are pending in other federal district courts that may be transferred with this action before one federal judge. In addition, the parties agree that temporarily staying this action will not prejudice any of the parties to this litigation.

BACKGROUND

This case is one of four putative class actions currently pending in four federal district courts in New York, Illinois, New Jersey, and Washington:

- A. *Czuba v. IKO Manufacture, Inc.*, Case No. 1:09-cv-00409-WMS
(Western District of New York)

- B. *McNeil v. IKO Manufacturing, Inc.*, Case No. 1:09-cv-04443
(Northern District of Illinois)
- C. *Zanetti v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-02017-DRD-MAS
(District of New Jersey)
- D. *Hight v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-00887-RSM
(Western District of Washington)

The plaintiffs in these actions allege that roofing shingles manufactured by the Moving Defendants and installed on homes purchased by the plaintiffs failed prematurely. Collectively, these four actions are referred to as the “IKO Roofing Shingle Actions.”

On August 6, 2009, the Moving Defendants submitted for filing with the JPML their MDL Motion seeking to transfer the IKO Roofing Shingle Actions for coordinated or consolidated pretrial proceedings. On August 27, 2009, Plaintiffs responded to the MDL Motion, and joined in the request for transfer of the IKO Roofing Shingle Actions. The Moving Parties therefore agree that the IKO Roofing Shingle Actions should be transferred.

Plaintiffs and the Moving Defendants (collectively referred to as the “Moving Parties”) are jointly seeking a stay of all of the IKO Roofing Shingle Actions pending the JPML’s ruling to help ensure that cases proceed at the same pace to avoid waste, duplication of efforts and conflicting pretrial rulings. The plaintiffs and the Moving Defendants are contemporaneously filing similar motions for a stay in the other three IKO Roofing Shingle Actions.

ARGUMENT

This Court possesses an inherent power to stay proceedings before it. *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936) (“the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants”). Courts routinely exercise this inherent authority to stay pretrial proceedings during the pendency of a motion to transfer pretrial

proceedings pursuant to 28 U.S.C. § 1407 in order to conserve judicial resources. *See Paul v. Aviva Life and Annuity Co.*, No. 09-1038, 2009 U.S. Dist. LEXIS 64420, at *2-3 (N.D. Ill. July 27, 2009)¹; David F. Herr, “Multidistrict Litigation Manual: Practicing Before the Judicial Panel on Multidistrict Litigation,” § 3:15 at 32 (noting that “[d]istrict courts. . . readily stay[] proceedings pending a Panel decision.”). That is because interim stays: (1) promote judicial economy; and (2) avoid inconsistent results among district judges in different district courts. *Bd. of Trs. for the Teachers’ Ret. Sys. of the State of Ill. v. WorldCom, Inc.*, 244 F. Supp. 2d 900, 905-06 (N.D. Ill. 2002) (finding that “the interests of judicial economy and the threat of inconsistent rulings” favor a stay of all pretrial proceedings pending the JPML’s transfer decision).

An interim stay in this case, put into place while the JPML decides the MDL Motion, will serve both goals while allowing the JPML a reasonable opportunity to rule on the MDL Motion. *Tench v. Jackson Nat’l Life Ins. Co.*, No. 99 C 5182, 1999 U.S. Dist. LEXIS 18023, at *3-5 (N.D. Ill. Nov. 12, 1999) (staying all pretrial proceedings pending the JPML’s transfer decision and noting that such stays are frequently granted to “avoid duplicative efforts and preserve judicial resources”); *Johnson v. AMR Corp.*, No. 95 C 7659, 1996 U.S. Dist. LEXIS 4172, at *11 (N.D. Ill. Apr. 3, 1996) (concluding that “the best course is to postpone ruling on the present motions. . . and allow the MDL panel to determine whether to make its conditional order final.”).

First, staying proceedings in this action will avoid forcing the parties to engage in duplicative pretrial practice. If numerous courts, including this Court, proceed with pretrial matters in advance of any decision by the JPML, then the efforts of this Court and the other courts (and the litigants in the actions over which the courts preside) might needlessly be

¹ Copies of the unpublished decisions are attached as Exhibit A.

repeated, perhaps many times over. Even worse, the efforts of these courts might be negated by any inconsistent decisions of any transferee court.

On the other hand, if this Court stays these proceedings and the JPML grants the MDL Motion and transfers all of the IKO Roofing Shingle Actions before a single judge in a single district court, the transferee court will be able to develop a common sense pretrial program that will ensure that the parties do not engage in duplicative work and will “conserve the resources of the parties, their counsel and the judiciary.” *In re Musha Cay Litig.*, 330 F. Supp. 2d 1364, 1365 (J.P.M.L. 2004); *see also In re FedEx Ground Package Sys., Inc., Employment Practices Litig. (No. II)*, 381 F. Supp. 2d 1380, 1381-82 (J.P.M.L. 2005) (noting that the transferee court has the ability to “structure pretrial proceedings to consider all parties’ legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands that duplicate activity that will occur or has already occurred in other actions.”); *In re M3Power Razor Sys. Mktg. & Sales Practices Litig.*, 398 F. Supp. 2d 1363, 1364-65 (J.P.M.L. 2005) (same); *In re IDT Corp. Calling Card Terms Litig.*, 278 F. Supp. 2d 1381, 1381-82 (J.P.M.L. 2003) (same).

Indeed, upon transfer, the plaintiffs in all of the actions will likely file a single consolidated complaint. *See* 8 Moore’s Federal Practice, § 42.13[5][a] at 42-30.1 (noting advantages of consolidated complaints as a management tool for complex litigation). Such a consolidated complaint could allow the Moving Defendants and any other defendant to answer or move for dismissal, once rather than four times (or more).

Second, staying the proceedings in this action and ultimately coordinating this action with the other IKO Roofing Shingle Actions before a single federal judge will allow the judge to consider any common legal and factual pretrial issues together. *See WorldCom*, 244 F. Supp. 2d

at 905-06. This approach would eliminate the risk that inconsistent decisions would be reached simultaneously by different federal district judges deciding common issues involving the same parties and the same putative classes. *See* 28 U.S.C. § 1407(a); *In re Air Crash Near Kirksville, Mo.*, 383 F. Supp. 2d 1382, 1383 (J.P.M.L 2005) (noting that consolidation will “prevent inconsistent pretrial rulings”).

Third, the entry of an interim stay will serve as a courtesy to the members of the JPML, who in addition to serving on the JPML are members of the federal circuit and district court benches. 28 U.S.C. § 1407(d). These judges presumably have dozens of cases under their regular docket over which they preside that also require their attention. Staying this proceeding for a short of amount of time will allow the JPML judges a reasonable amount of time to rule on the MDL Motion.

Finally, the parties agree that an interim stay will not unfairly prejudice any of them. The litigation is still in the early stages as only a complaint has been filed. No responsive pleading has been filed and no discovery has been taken. If the MDL Motion is granted, and this case is transferred with the other actions, then the parties will have an opportunity to raise pretrial matters with the transferee court at the appropriate time. *See, e.g., Tench*, 1999 U.S. Dist. LEXIS 18023 at *5. Under these circumstances, no party to this litigation faces unfair prejudice from the requested stay.

CONCLUSION

A temporary stay of these proceedings while the JPML decides the Moving Defendants’ MDL Motion is appropriate. It will help avoid duplicative pretrial motion practice and discovery, and will minimize the risk of there being inconsistent decisions in the multiple IKO Roofing Shingle Actions. In addition, none of the parties will be prejudiced by a temporary stay.

Accordingly, the Court should stay all pretrial proceedings in this case pending the JPML's decision on the MDL Motion.

Dated: September 22, 2009

Jointly and respectfully submitted,

**PAMELA D. MCNEIL and
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2009, I served a copy of the foregoing document to all counsel of record via the ECF/CM document filing system.

/s/ Christopher M. Murphy